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REQUEST FOR FURTHER WAIVER OF FCC RULES TO EXTEND RELIEF
PROVIDED IN FCC 05-178 TO DIRECTLY AFFECTED
SCHOOLS AND LIBRARIES
IN LOUISIANA AND MISSISSIPPI

Federal Communications Commission
Office of the Secretary

FILED BY THE STATES OF LOUISIANA AND MISSISSIPPI

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BACKGROUND

In order to provide assistance to the victims of Hurricane Katrina in Alabama, Louisiana, and Mississippi, the Commission issued FCC 05-178 (the Katrina Relief Order), which modified various Universal Service Program rules to more effectively target support to the disaster area and to people affected by Hurricane Katrina. With respect to the Schools and Libraries Universal Service Support program (the E-rate program), the order provided that schools and libraries that were directly affected by Katrina are assigned the highest level of priority (i.e., 90 percent) for Funding Years 2005 and 2006, opened a special filing window for directly and indirectly affected schools and libraries for Funding Year 2005, waived the 2-in-5 rule for directly affected entities receiving internal connections in 2005, and provided broad service substitution authority for directly affected entities for 2005. The special filing window for 2005 opened on October 14, 2005, and closes December 13, 2005.

EXTENT OF THE DAMAGE FROM HURRICANE KATRINA

Katrina damage was so extensive – both in terms of geography and the damage to affected entities – that even assessing it will take many months and addressing it will take years.

FCC 05-178 provided a special filing window for Funding Year 2005 for Katrina-affected entities that closes on December 13, 2005. It also provided that schools and libraries directly affected by Hurricane Katrina qualify for special treatment for Funding Year 2006. The filing window for that funding year will likely close sometime in February or March of 2006. There is no special treatment after Funding Year 2006.

We greatly appreciate the Commission's efforts to help alleviate the damage from Hurricane Katrina in our states. But, as we have worked with schools and libraries to take advantage of the relief provided for schools and libraries, we have come to realize that the tight time frames provided for requesting funding will mean that very few of the affected entities will have sufficient information to prepare appropriate requests for funding.

Many of the homes of employees of damaged schools and libraries were themselves destroyed and those employees forced to evacuate for extended periods. The ability to assess the damage inflicted on those schools and libraries has been affected by those

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absences. School students and library patrons were forced from their homes and many will not be able to return for months or longer, if ever. Therefore, the extent of reconstruction of schools and libraries that will be justified by the populations they will serve is unknown now and will be for some time.

A specific example may help the Commission understand these realities. St. Bernard Parish was one of the most devastated areas in Louisiana. Two months after Hurricanes Katrina and Rita hit, many areas in St. Bernard are without power, telephone services, and water. All residents are forced to exit the Parish before 6:00 p.m. Officials are uncertain whether to demolish as many as 90 percent of the homes in the Parish or whether the toxic black mud is an environmental hazard.

Before Katrina, St. Bernard had 15 schools serving about 8,400 students. All the schools were very heavily damaged. Most homes were also heavily damaged. The Technology Coordinator for St. Bernard Parish Schools had to evacuate the Parish and expects to be able to return in early November (more than two months after Katrina) and then to a FEMA trailer. The St. Bernard Parish School Board has announced that classes will resume on November 14, if state and federal agencies provide clearance. At this time, the expectation is that between 43 and 100 students will begin classes on November 14. Classes will be held at first in FEMA trailers. By the start of 2006, Parish officials expect to have FEMA-provided modular units installed on the football fields of two middle schools. As of November 1, assessments of the 15 damaged schools in St. Bernard Parish have not begun, and no one can reliably predict the size of the student population the school system will serve next year or thereafter. For the 2005 funding year, St. Bernard Parish Schools will request funding needed to provide services to the modular units that will be installed by January. Parish officials will not have sufficient additional information by February or March (let alone by January or February when Forms 470 will have to be filed) to prepare appropriate requests for funding for Funding Year 2006. We expect that by the end of the summer of 2006, they will be in a much better position to prepare such requests.

REQUEST

The states of Louisiana and Mississippi appreciate the relief from the effects of Hurricane Katrina that the Commission provided in FCC 05-178, but, as we have worked to help schools and libraries in the states take advantage of the order, we have realized that the time frames provided in the order for applying for relief will preclude many of the most devastated entities from participating. We request that the Commission provide a special filing window for schools and libraries directly affected by Hurricane Katrina for Funding Year 2006 that would remain open until September 30, 2006. (Please note that the state of Louisiana is separately requesting that the relief provided under FCC 05-178 be extended to those affected by Hurricane Rita. We would ask that, if the Commission grants that request, schools and libraries directly affected by Hurricane Rita also be able to submit requests in this special FY 2006 filing window.)

We would also request that the 2-in-5 rule be waived for directly affected schools and libraries in Louisiana and Mississippi receiving internal connections commitments for Funding Year 2006.

Note that we do not ask for this treatment for indirectly affected schools and libraries in our states since we believe they will be able to determine their needs in the shorter term.

RATIONALE

Our states are committed to avoiding waste, fraud, and abuse in the use of funds under the Katrina relief order. As the order acknowledged and authorized, our state E-rate coordinators will play a special role in ensuring that our applicants comply with FCC rules while participating in the special filing window for 2005 and that their requests will be free of waste, fraud, and abuse. But we are concerned that, if requests under the relief order must be filed prior to December 13, 2005, or, for Funding Year 2006, by February or March of 2006, applicants will request funding for services and products that they MAY need but that they have not finally determined that they WILL need. If the 2-in-5 waiver only applies to Funding Year 2005, there will be an incentive not to delay requests until Funding Year 2006 although applicants will likely be much better positioned to make appropriate requests if they wait until the special filing window for 2006 that we propose. Early requests for funding inadvertently driven by provisions of the current order may lead to unintended waste, which can be avoided by allowing more time for the assessments of damage and for the identification of the need for reconstruction of schools and libraries based on a better understanding of returning populations.

MITIGATION OF IMPACT ON OTHER STATES

Unless some funding set-aside is created for a special Funding Year 2006 filing window for directly affected entities in Louisiana and Mississippi, USAC will not be able to determine the total demand for funding for Funding Year 2006 until the second quarter of the funding year and that will delay decisions on its ability to make funding commitments to other states. To avoid that impact, we urge the Commission to set aside unused funds from prior years to fund approved requests made by directly affected entities in Louisiana and Mississippi for Funding Year 2006. In its *Fund Size Projections for the Fourth Quarter 2005* filed August 2, 2005, USAC reported \$365 million in unused E-rate funds from prior years that could be rolled over into the current or future funding years. None of those funds have yet been rolled over into Funding Year 2005. Unless demand from applications filed in the special filing window for Funding Year 2005 requires additional funding for that year beyond the annual cap of \$2.25 billion, we recommend that the FCC not direct rollover of any of those funds for Funding Year 2005. Instead, we recommend that the FCC set aside those funds and any additional unused funds that USAC reports in subsequent filings until the demand for funds in the special window for Funding Year 2006 can be assessed and that it use those set-aside funds for applications filed in the special filing window for 2006. That should permit USAC to process regularly filed applications for 2005 using the annual cap of \$2.25 billion without undue delay.